

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5759 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARESHKUMAR BABULAL PATEL

Versus

AHMEDABAD MUNICIPAL CORPN

Appearance:

MR YN Oza for the Petitioners

Mr. P.G.Desai for the respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/03/99

ORAL JUDGEMENT

This petition has been filed for a direction to the respondent Corporation not to demolish the properties of the petitioner mentioned in para-2 of the petition.

2. The petitioners are carrying on their business at 135, Sardar Patel colony, Stadium road, Ahmedabad without causing any obstacle or hindrance to the pedestrians or vehicles. There is no complaint

either from the members of the public or from the police regarding any hindrance or disturbance being caused by the petitioners to anybody. The Corporation illegally, arbitrarily and in malafide manner without following the procedure contemplated under sections 260 and 261 of the Bombay Provincial Municipal Corporations Act, 1949 demolished some shops in the locality on 21st October, 1985. Hence, the petitioners also apprehend that the respondent Corporation will also demolish their shops and hence, they have filed this petition for a direction in prohibitory nature to the respondents.

3. The respondents have filed affidavit-in-reply wherein it is stated that the petitioners were given notice under section 260(1) of the Bombay Provincial Municipal Corporations Act, 1959 and that notice was served to each of the petitioners on 24.4.79. The petitioners also filed their reply on 30th April, 1979. Final decision was taken by the Deputy Town Development Officer of the respondent Corporation on 19th July, 1979 after considering the reply of the petitioners. On the basis of the decision taken by the Corporation, notice dated 30th July, 1979 under section 260(2) of the Act was served on each of the petitioners personally. Thus, the Corporation has not violated any statutory provisions and the action of the Corporation is not arbitrary or malafide.

4. I have heard the learned counsel for the petitioners and perused the relevant record. A bald allegation has been made by the petitioners that the action of the respondent Corporation is illegal, arbitrary and malafide without following the procedure contemplated under sections 260 and 261 of the Bombay Provincial Municipal Corporations Act, 1949. The affidavit-in-reply filed on behalf of the respondent Corporation clearly shows that the procedure provided by sections 260 and 261 of the B.P.M.C. Act, 1949 has been completely followed. The petitioners have not made any specific allegation regarding arbitrariness or malafide intention on the part of the respondent Corporation in demolishing the shops in question. On the other hand, it appears that the Corporation has taken care and precaution in complying with the provisions of the said Act. Notice were issued to each of the petitioners and they were served personally. Each of the petitioners has also filed reply and then final decision was taken after considering the reply of the petitioners. Thereafter, the notice dated 30th July, 1979 under section 260(2) of the Act was given to each of the petitioners and was served upon them. In no way, it can be said that

relevant provisions of the Act have not been followed by the Corporation in demolition of the shops in question.

5. In view of the above discussion, I do not find any merit in this petition. The petition is, therefore, liable to be dismissed. Accordingly, the same is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated. However, it is open to the respondent Corporation to take appropriate steps after issuing a fresh notice to the petitioners under the provisions of section 260 of the BPMC Act.

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